

SECTION IX - PERFORMANCE AND MAINTENANCE GUARANTEE

9.1 POSTING OF PERFORMANCE GUARANTEE

The Board, under advice from the Town Engineer, shall set the amount and type of the performance guarantee prior to the final approval of the subdivision plan. The developer shall post such guarantee with the Town prior to the scheduling of a preconstruction meeting and the issuance of any building permits for the site. The guarantee shall cover the estimated cost of constructing and installing all site improvements, including, but not limited to: street work (both public and private roads), drainage facilities, parking and/or loading facilities, landscaping, and other utilities.

The basis for determining the performance guarantee shall be 100% (one hundred) of the costs of all required site improvements, plus any other funds necessary for the completion of ancillary work as conditioned by the Board's approval. The amount shall be reviewed and approved by the Board. Time limitations shall be imposed upon completion of the improvements of the site in accordance with the approval and 9.2. Bonding shall not be considered a vesting of rights, nor shall posting of a bond be considered "active and substantial development or building". Failure to commence work on site improvements within the specified time limits will result in one of the following situations a forfeiture of the performance guarantee in favor of the town in order to complete the required improvements, or; the need to post a new guarantee prior to construction, or; revocation of the approved plan pursuant to RSA 676:4-a.

Performance Guarantees must be represented in a written agreement with, and acceptable to, the Board, and Town Counsel. This provision insures proper and legally binding agreements and appropriate economic assurance for the protection of the Town of Newton and its citizens.

The Board may accept the following methods of posting a performance guarantee (Amended 2008):

- A. Cash or a savings passbook held in the name of the Town and deposited with the Town Treasurer.
- B. A letter of credit in an amount and manner acceptable to the Board after consultation and approval by Town Counsel.

The approved bond value shall be re-evaluated at the time of posting, prior to the issuance of any building permits for the site, and at each request for bond reduction. Bond value shall be subject to an inflationary increase at each re-evaluation. (Added 2008)

9.2 RELEASE OF PERFORMANCE GUARANTEE

Upon inspection of a partial completion of required improvements, the Board may authorize in writing a reduction in the performance guarantee up to an amount equal to the work completed. The Town shall retain sufficient funds for the current cost to complete the remaining improvements as indicated by a qualified contractor's bid estimate approved by the Board, plus a retainage of 20% (twenty) of the original performance guarantee amount which shall be kept until all required improvements have been inspected and accepted by the Town. If the costs for completing the required improvements exceed the amount of performance guarantee held by the Town, additional funds shall be required by the Board, in order to ensure completion before the development proceeds any further. The retainage shall be held until the completion of all required improvements have been inspected and approved by the Board should progress toward the completion of all required improvements fall substantially behind the mutually agreed upon timetable, the Board may obtain a completion cost estimate, at the applicant's expense, from:

- A. The developer's contractor; or
- B. A qualified contractor of the Board's choice.

If the estimated completion costs exceed the amount of the performance guarantee posted with the Town, the developer shall post an additional performance guarantee as is necessary to complete the

required improvements. The developer shall post such guarantee within thirty (30) days of notice thereof.

The performance guarantee (or balance thereof) shall not be released until the Board (or its agent) has certified completion of the required site improvements in accordance with the approved final plat, and Town Counsel has reviewed and approved all deeds governing land to be used for public purposes, as well as all easement agreements for the site.

Installation of all required improvements shall be completed within two (2) years of the date of the final plan's approval, unless the time frame is extended by mutual consent of the applicant and the Board. If the required improvements are not satisfactorily installed within the mutually agreed upon timetable, the posted performance guarantee shall be forfeited by the applicant.

Prior to the return of the balance of the performance guarantee, the Town's Building Inspector, Code Enforcement Officer, or designee, shall certify that all site improvements have been installed as per the approved site plan. Furthermore, the developer shall certify that the "as built" location of all newly installed utilities is in conformance with the approved subdivision plan. Any change in location of the utilities shall require the submission of "as built" plans indicating the actual location of the newly installed utilities.

9.3 MAINTENANCE BOND

For roads proposed to be accepted by the Town, the Board will not release the performance guarantee until a maintenance bond is in place. The Town will require a maintenance guarantee (as permitted in 9.1, A and B), covering the maintenance of public roads and other public improvements for a period of two (2) years from the date of completion, in an amount no less than 10% and no more than 20% of the improvement costs. If repair or unusual maintenance is needed or additional improvements are required then such costs as are necessary shall be drawn against said guarantee.

SECTION X - WAIVERS

10.1 GENERAL

Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to 7, 8, and 9 of these regulations. The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that *all* of the following apply:

- A. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
- B. The waiver will not, in any manner, vary the provisions of the Newton Zoning Ordinance, Newton Master Plan, or Official Maps.
- C. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
- D. A particular and identifiable impediment exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of an impediment shall include, but not be limited to:
 - 1. Topography
 - 2. Site features
 - 3. Geographic location of property

4. Size/magnitude of project being evaluated.

10.2 CONDITIONS

In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

10.3 PROCEDURES

A petition for any such waiver shall be submitted in writing by the applicant with the application for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. A sample form has been attached to these regulations as an Appendix, this format is suggested but not required.

SECTION XI - PENALTIES

The Town will seek enforcement and all penalties statutorily permitted under RSA 676:17, including but not limited to the following:

Per RSA 676:17, as amended, any person, firm or corporation violating any of the provisions of these regulations shall, for each violation, upon conviction thereof, pay a fine as permitted by statute. This fine shall accumulate from the date of conviction, or the date on which the violator receives written notice from the Town of the violation, whichever is earlier. The Town may seek all statutory remedies as permitted under RSA 676:17, or other appropriate law or regulation.

In accordance with RSA 676:17, II, the Town shall also seek costs and reasonable attorney's fees in any action to enforce these regulations or in defense of any appeal in which the Town is found to be the prevailing party.

SECTION XII - VALIDITY

12.1 INTERPRETATION

In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

12.2 CONFLICTING PROVISIONS

Where any section of these regulations conflicts with another, or with any other local regulations or ordinance, the requirement imposing the greater restriction or higher standard shall apply. In addition, the fact that a requirement under these regulations is less restrictive than a federal or state regulation or statute does not relieve an applicant from compliance with the terms of such regulation or statute, unless specifically authorized by said regulation or statute.

12.3 SAVING CLAUSE

If any section, clause, provision or portion of these regulations shall be held to be invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not affect or impair any other section, clause, provision or portion of these regulations.

SECTION XIII - EFFECTIVE DATE

These regulations, and amendments, shall take effect in accordance with the requirements of RSA 675:6, as amended. These regulations shall replace all previous regulations pertaining to the subdivision of land which are hereby repealed with the adoption of these regulations.